

**San Francisco
Ethics Commission**



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FAX COVER SHEET

DATE: Monday, August 11, 2008

TO: **FPPC**
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FROM: Oliver Luby, San Francisco Ethics Commission

NUMBER OF PAGES FOLLOWING THIS COVER SHEET: 3

PLEASE CALL (415) 252-3110 IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX.

MESSAGE:

Comment on Item 15 for August 14, 2008 agenda.

If someone could call (415-252-3110) or e-mail (oliver.luby@sfgov.org) me to confirm receipt of this fax, I would be appreciative. Thank you.

-Oliver Luby

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To: Brian G. Lau, Scott Hallabrin, and the Fair Political Practices Commission

From: Oliver Luby

Date: August 11, 2008

Re: **Proposed Regulation 18402.1 and Amendment of Regulation 18427 – Principal Officer: Definition and Reporting Requirements**

This is commentary regarding the California Fair Political Practices Commission's (FPPC) proposals for the Principal Officer definition and reporting requirements, as provided in the agenda materials for the August 14, 2008 meeting. Though I am the Fines Collection Officer of the San Francisco Ethics Commission, please note that this commentary is entirely my own and should not be construed as the opinion of the Ethics Commission.

I commend and recommend the FPPC's proposal to define Principal Officer and encourage disclosure of persons other than treasurers who actually control and run non-candidate recipient committees in California. Though the public is currently informed about the identity of registered treasurers of General Purpose committees and Ballot Measure committees, other persons are usually extensively involved in the management of these committees and the public frequently receives no specific disclosure about the fact that they run the committee; sometimes, the names of these persons do not even appear at all in the disclosure statements of the committee. In my experience, this lack of disclosure regarding the leadership of committees also encourages the use of treasurers as scapegoats when problems arise, despite the presence of Government Code Section 83116.5. The proposed reforms offer a critically important component of electoral campaign transparency.

While the proposed Regulation changes are excellent, I do have suggestions for their improvement.

18402.1

1. Correcting "contributions or expenditures."

Proposed Section 18402.1(b), enumeration (2), applies Principal Officer status to any individual "*Authorizing contributions or expenditures on behalf of the committee.*" Since the making of a contribution to someone else is a type of expenditure, the language of this section is legally redundant and can cause confusion. I recommend that the section be edited down to the following: "*Authorizing expenditures on behalf of the committee.*" I also recommend that a fourth enumerated category for defining Principal Officer be added with the following language: "*Setting policies for soliciting contributions.*"

2. Fully defining "Principal Officer."

The proposed definition for Principal Officer ("*primarily responsible for approving the political activity*" plus enumerated examples) is not explicitly expansive enough. Under the proposed language, a controlling committee backer or organizer could rationalize that the definition does not apply to them if they hired or appointed someone to set up a committee and to have primary responsibility for the committee, including authorizing expenditures as so forth. "Principal

Officer" should include power brokers and contributors who initiate the genesis of committees and/or who essentially dictate committee policy and goals.

An extended definition of "Principal Officer" might utilize a variety of drafting options. For example, I recommend the addition of the following categories to the enumerated list of examples of those who authorize committee activity:

- i. *Initiating the creation of the committee (though not necessarily the formal formation of the committee), until this individual affirmatively resigns any role in the committee's activity (individual must be disclosed on at least initial Statement of Organization);*
- ii. *Setting committee goals and objectives, until this individual affirmatively resigns any role in the committee's activity (individual must be disclosed on at least initial Statement of Organization);*
- iii. *Appointing the committee's treasurer;*
- iv. *Employing, serving as an employment supervisor or superior of, or contracting as a client of another Principal Officer, if this individual is involved in the activities of the committee;*
- v. *Contributing, or directing and controlling contributing, of 10% or more of the committee's monetary contributions, if not less than \$50,000¹ and if otherwise involved to even a small degree in the formation of committee policy, goals, or objectives.*

3. Reconciling 18402.1 with 84102(c) – Treasurers are "principal officers" under the Act.

The July 28, 2008 memo on the proposed Regulation changes misquotes Government Code Section 84102(c). While the memo states that the Statement of Organization disclosure requirement applies to *"the treasurer and principal officers,"* the actual text of the statute is *"the treasurer and **other** principal officers"* (bold added). In fact, an FPPC Advice Letter (Nielsen, A-98-112) specifically discusses that language in the context of treasurers as officers of committees within the meaning of Government Code Section 84211(t) (now 84211(s)). Consequently, it appears that the Act automatically considers committee treasurers to be principal officers. As a result, the proposed text of Regulation 18402.1(d) appears to be based on a slight misunderstanding of the meaning of 84102(c).

To reconcile 18402.1 with 84102(c), I recommend that the following changes be made to 18402.1:

- i. 18402.1(a) – Replace *"principal officer"* with *"principal officer(s)."*
- ii. 18402.1(b) – Include language to note that "principal officer" includes both the committee treasurer and *"the individual primarily responsible for approving the political activity of the committee."*
- iii. 18402.1(d) – Replace the proposed text with the following or substantially similar language, *"If no individual other than the committee treasurer has the primary responsibility for approving the political activity of the committee as set forth in subdivision (b), the fact that the treasurer is the sole principal officer must be specifically disclosed in any filing required by Section 84101."*

¹ I derived the \$50,000 figure from the disclosure thresholds set by Government Code Section 84501 *et seq.*

Any filing required by Section 84101 must also disclose if the treasurer does not have or share primary responsibility for approving the political activity of the committee."

4. Including responsible officers of sponsors.

FPPC Regulation 18419(c)(4) provides a circumstance whereby a "responsible officer" of a recipient committee's sponsor verifies the committee's campaign statements. Unfortunately, the information provided by such verification only includes this officer's signature and a date (though the Statement of Organization must provide the name and contact info for the sponsor itself). Signatures are often difficult to read if not illegible, which can complicate identifying the responsible officer of the sponsor.

In order to make the most effective use of the disclosure afforded by 84101, 18402.1(b) should provide a second category of "principal officer" who, like the treasurer (see above under #3), is not necessarily primarily responsible for approving the political activity of the committee. Consequently, language should be added to 18402(b) that clearly indicates that "responsible officer" includes not only (a) the treasurer and (b) the individual primarily responsible for approving the political activity of the committee but also (c) any responsible officer of the committee's sponsor who verifies the committee's statements. In addition, language should be added to some section of 18402 to require 84101 disclosures to identify whether a listed sponsor's responsible officer has or shares primary responsibility of approving the political activity of the committee (for reference, see above under #3, item # iii).

18427

First, I recommend that the amended Regulation 18427(d) insert, "as defined by 2 Cal. Code Regs. 18402.1(b)," in between "the committee" and "will be considered." This provides clarification regarding 18427(d).

Second, though principal officers that are responsible for approving committee political activity have a level of authority over their committees similar to that of a controlling candidate over his or her campaign committee, the proposed text of 18427 provides only the most minimal of duties for these principal officers – the officers have the duties of a treasurer only in the event that no treasurer is designated. While the duties of a candidate are probably too much to expect of principal officers approving committee activity, perhaps the FPPC should consider adding another sub-section to 18427 which explains the duties of principal officers approving committee activity when a treasurer has been designated.